

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
TAMPA DIVISION

**FILED IN  
OPEN COURT**  
3-25-03

UNITED STATES OF AMERICA

v.

SAMI AMIN AL-ARIAN, et. al.

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CASE NO.: 8:03-CR-77-T-30-TBM

UNITED STATES' OPPOSITION TO DEFENDANTS'  
USE OF ASSETS OF TAX-EXEMPT ORGANIZATIONS  
AS SECURITY FOR PROPOSED BONDS

The United States hereby objects to the proffer of assets of charitable and religious tax-exempt organizations as security for the proposed bonds of defendants HAMMOUDEH, AL-ARIAN and BALLUT. As set forth below, the defendants' proposal constitutes an unlawful use of tax-exempt organizations and would subject these organizations to potential revocation of their exempt status.

During the pendency of the defendants' detention hearing, defendants HAMMOUDEH and AL-ARIAN have proffered to the Court that the assets (in the form of deeds to property) of the Islamic Academy of Florida (IAF), located at 5910 E. 130<sup>th</sup> Avenue, Tampa, Florida, would be available as collateral, or security, for a bond in the event the Court determines that the defendants should be released. Likewise, Defendant BALLUT, through a letter from the "Executive Director" of the Chicago Islamic Center (CIC), located at 3357 W. 63<sup>rd</sup> St., Chicago, Illinois, proffered the value of the mosque property (approximately \$300,000-400,000) as security for a bond in the event the Court releases him. Both organizations, however, have received tax exempt status pursuant to

Title 26, United States Code, Section 501(c)(3),<sup>1</sup> and cannot be used in the manner proposed by the defendants and maintain their tax exempt status. In essence, the defendants' proposals threaten to convert a church and a school into, at best, non-exempt legal defense funds, or, at worst, bail-bonds businesses.

### Memorandum of Law

Title 26, United States Code, Section 501(c)(3), provides tax exemption for corporations "organized and operated exclusively for religious [or] charitable . . . purposes . . . no part of the net earnings of which inures to the benefit of any private shareholder or individual. . . ." Because these requirements are stated in the conjunctive, they all must be met. Lowry Hospital Association v. Commissioner of Internal Revenue, 66 T.C. 850, 857 (U.S. Tax Ct. 1976). "[T]he presence of a single [non-exempt] purpose, if substantial in nature, will destroy the exemption regardless of the number or importance of truly [exempt] purposes." Better Business Bureau of Washington D.C. v. United States, 326 U.S. 279, 283 (1945); Nationalist Movement v. C.I.R., 37 F.3d 216 (5<sup>th</sup> Cir. 1994); see also 26 C.F.R. §1.501(c)(3)-1. Moreover, the inurement restriction has been narrowly construed; courts have held that any money or benefits flowing to private persons which

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<sup>1</sup>According to public databases, the CIC received its tax exempt status in 1992 as a "church." The IAF received its tax exempt status from the United States Internal Revenue Service in 1996. According to the most recent publicly-available Form 990, "Return of Organization Exempt from Income Tax," filed by the IAF (tax year 2000-2001), defendants AL-ARIAN and HAMMOUDEH, along with Mazen Al-Najjar, are listed as "Officers, Directors, Trustees, and Key Employees" of the organization. Defendant AL-ARIAN is listed as having custody of the books of the organization and defendant HAMMOUDEH is named as Treasurer of the IAF. In addition, despite testimony adduced during the hearing that both defendant HAMMOUDEH and his wife were employed by the IAF, the Form 990 indicates that no compensation has been paid, either directly or indirectly, to any of its officers or members of their families.

are not ordinary and necessary business expenses, no matter what the amount, constitute inurement. Unitary Mission Church of Long Island v. Commissioner of Internal Revenue, 74 T.C. 507, 513 (U.S. Tax Ct. 1980), aff'd without published opinion, 647 F.2d 163 (2d Cir. 1981); Founding Church of Scientology v. United States, 188 Ct. Cl. 490, 500, 412 F.2d 1197, 1202 (Ct. Cl. 1969), cert. denied 397 U.S. 1009 (1970). In other words, the extent of inurement is immaterial. Orange County Agr. Soc., Inc. v. C.I.R., 893 F.2d 529 534 (2d Cir. 1990).

Here, the defendants violate both requirements of §501(c)(3): they propose to use a substantial portion of the organizations' assets for a non-exempt purpose (a bail bond), which also confers an extremely valuable benefit on the defendants, who in this context are merely private individuals accused of a number of serious federal crimes. It is not inconsequential that the defendants – the individuals for whom the benefit of the CIC and IAF's assets is offered – have served in key leadership positions in these organizations. Indeed, the defendants' use of the IAF and CIC for personal benefit is entirely consistent with the government's theory that the defendants have used a variety of such organizations as cover for their illicit activities.


In addition to the potential violation of tax laws resulting from the defendants' proffer of IAF and CIC assets as collateral, the Court should consider the public policy concerns inherent in the proposal. If the Court were to accept the proposed properties as security, it would become a party to transactions that could become the basis for a subsequent action to revoke the IAF and CIC's tax-exempt status. Congress enacted Section 501(c)(3) because it recognized the benefits society derives from the activities of churches and other charitable organizations; the Court should therefore view as against public policy any

attempt on the part of the defendants to use the assets of the IAF and CIC for their personal benefit.

In light of the foregoing, the United States respectfully requests that the Court decline to consider the value of the property belonging to the IAF and the CIC as a potential source of security for any bond issued on behalf of defendants HAMMOUDEH, AL-ARIAN, and BALLUT.

Respectfully submitted,

PAUL I. PEREZ  
United States Attorney

By:   
CHERIE L. KRIGSMAN  
Special Assistant United States Attorney  
400 North Tampa Street, Suite 3200  
Tampa, Florida 33602  
Telephone: (813) 274-6000  
Facsimile: (813) 274-6108

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing was furnished by hand delivery, this 25<sup>th</sup> day of March, 2003, to the following:

Nicolas M. Matassini, Esquire  
2811 West Kennedy Boulevard  
Tampa, FL 33609  
*Counsel for defendant Al-Arian*

Daniel Mario Hernandez, Esquire  
902 N. Armenia Ave.  
Tampa, FL 33609  
*Counsel for Hammoudeh*

Bruce G. Howie, Esquire  
5720 Central Ave.  
St. Petersburg, FL 33707  
*Counsel for Ballut*

Donald E. Horrox  
Federal Public Defender's Office  
400 N. Tampa St., Suite 2700  
Tampa, FL 33602  
*Counsel for defendant Fariz*

  
for WALTER E. FURR, III  
Assistant United States Attorney